

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5815 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LILABHIA B RABARI

Versus

DISTRICT COLLECTOR

Appearance:

MR ANANT S DAVE for Petitioners

Mr. L.R.Pujari, AGP for Respondents.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 28/09/2000

ORAL JUDGEMENT

Learned advocate Mr. Dave is appearing for the petitioners and learned AGP Mr. Pujari is appearing for the respondent authorities. In this petition, this court, while issuing notice on 23.8.1991, directed to

maintain status quo as on that day. Subsequently, on 24.8.1992, rule has been issued by this court with a direction that the interim relief of status quo granted earlier to continue till the final disposal of this petition. Thus, the status quo granted earlier has continued till this date.

The petitioners are staying at Mehtapura in Taluka Himatnagar, District Sabarkantha since more than 30 years. According to the petitioners, their forefathers were also staying in the huts which are situated in the said area. The petitioners are having electricity connection and they are residing there with their families and cattles. The names of the petitioners have also been entered in the electoral roll. The petitioners are also possessing ration card. The petitioners are belonging to back ward community and they are very poor. It is their case that they had approached the Chairman of the Baxi Panch, State of Gujarat vide application dated 3rd July, 1981 with a request to regularize their occupation in the land in question and copy of the said application was forwarded to the Minister of Social Welfare and Collector, Sabarkantha District. Thereafter, the petitioners had approached the District Collector, Sabarkantha District with a request to regularize their possession on the land in question on the basis of the Govt. Resolution, Revenue Department dated 13th December, 1978. Learned advocate Mr. Dave appearing for the petitioners has submitted that the applications submitted by the petitioners to the above authorities are still pending and no decision has been taken thereon by the authorities. He has submitted that while their applications for regularization were pending, the petitioners received letter dated 18.8.1981 from the City Survey Superintendent wherein it has been mentioned that the petitioners have illegally encroached upon the land in question which encroachment is required to be removed and, therefore, the petitioners were directed to remove the same within fifteen days. It has also been stated therein that if the encroachment is not removed within the period stipulated in the said letter, appropriate proceedings will be initiated for removal of such encroachment in accordance with the provisions of the Bombay Land Revenue Code. In this petition, the petitioners have challenged the said notice issued by the City Survey Superintendent dated 18.1.1981.

Today, during the course of hearing, it has been submitted by Mr. Dave that though two representations have been made by the petitioners at an earlier point of time for regularization, the respondents have taken no

decision on such representation. He has submitted that in view of the long possession of the petitioners over the land in question, now the respondents are not justified in issuing such a notice for removal of encroachment. He has submitted that in view of the passage of time, now the petitioners will make fresh representation for regularization pointing out their long possession and the respondents may be directed to give sympathetic consideration to such representation and may also be directed to decide the same in accordance with law within some stipulated period. He has submitted that till such representation that may be made by the petitioners hereinafter is decided by the respondent authorities, the petitioners are required to be protected by continuing the interim relief which has been initially granted by this court while issuing notice so that the petitioners are not dispossessed. According to his submission, the land in question is the only shelter of the petitioners and therefore, in the interest of justice, the petitioners are required to be protected for such intervening period.

Learned AGP Mr. Pujari appearing for the respondent authorities has submitted that the petitioners may be directed to make such representation a fresh and the respondent - Collector, Sabarkantha District will definitely consider such representation in accordance with law.

Having heard the learned advocates for the parties and also having considered the submissions made by them, I am of the view that in the facts and circumstances of the case, it would be just and proper to direct the petitioners to make representation in the subject matter of this petition before the respondents, for regularization of the land in question within some period and the respondent Collector is also required to be directed to consider such representation that may be made by the petitioners hereinafter in accordance with law within some stipulated period and in the meantime, in view of the long possession of the petitioners over the land in question, the petitioners are required to be protected in the interest of justice.

Accordingly, the petitioners are directed to make fresh representation in the subject matter of this petition in detail to the District Collector, Sabarkantha for regularization of the land in question within one month from the date of receipt of certified copy of this judgment and the respondent Collector, Sabarkantha District is directed to consider and decide such

representation that may be made by the petitioners hereinafter sympathetically and also in accordance with law within three months from the date of receipt of such representations from the petitioners. Till such representation made by the petitioners is decided by the respondent Collector, Sabarkantha District, the interim relief granted earlier by this court on 23rd August, 1991 shall continue to operate. Subject to these directions, this petition is disposed of. Rule is discharged with no order as to costs.

28.9.2000. (H.K. Rathod, J.)

Vyas